

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FedEx Freight, Inc.,
Employer,

and

Case 10-RC-136185

International Brotherhood of Teamsters,
Local Union No. 71, a labor organization affiliated with,
International Brotherhood of Teamsters,
Petitioner.

Petitioner Teamsters Local Union No. 71 Opposition to Employer Request for Review

International Brotherhood of Teamsters Local Union No. 71, a labor organization affiliated with, International Brotherhood of Teamsters, Petitioner in the above-referenced case, opposes the Employer's Request for Review pursuant to Section 102.67(e) of the Board's Rules and Regulations. The Regional Director¹ has determined that Petitioner has shown existence of a question affecting commerce concerning representation and has scheduled an election for **Wednesday, November 19, 2014** in the following appropriate unit of employees: **Included:** All full-time and regular part-time Road Drivers and City Drivers employed by the Employer at its 4349 Scott Futrell Drive, Charlotte, North Carolina terminal; **Excluded:** all other employees, Dockworkers/Driver Apprentices, Supplemental Dockworkers, Mechanics, building and custodial employees, office clerical employees, and guards and supervisors as defined in the Act.

¹ Petitioner, Teamsters Local 71, filed a petition on September 8, 2014, as amended September 16, 2014, to represent a unit of City Drivers and Road Drivers employed by the Employer at its Charlotte, NC terminal. On September 22, 2014, a hearing record was made consisting of stipulations of facts and exhibits by the parties, to include the evidence and issue joined in *FedEx Freight, Inc.*, Case 04-RC-133959. On September 29, 2014, the General Counsel for the Board issued an order transferring this case from Region 10 to Region 4. On October 21, 2014, the Regional Director for Region 4 issued the Decision and Direction of Election in this case. On October 23, 2014, the General Counsel for the Board issued an order transferring this case from Region 4 to Region 10. On November 4, 2014, the Employer filed a Request for Review of the Regional Director's DD&E.

Road Drivers/City Drivers constitute an appropriate unit at the Charlotte, NC terminal

“If a petitioner seeks to represent a unit of employees that is readily identifiable as a group and shares a community of interest, the unit will be found appropriate unless a party seeking a broader unit demonstrates that the employees it seeks to add share an overwhelming community of interest with the employees in the petitioned-for unit.” *FedEx Freight, Inc.*, Case 10-RC-136185, Decision and Direction of Election (“DD&E”) by Dennis P. Walsh, Regional Director, Region 4, dated 10/21/2014, page 1. See also: *FedEx Freight, Inc.*, Case 04-RC-133959, DD&E, 9/10/2014, p.1, Order denying review, 10/8/2014; *FedEx Freight, Inc.*, Case 04-RC-134614, DD&E, 9/16/2014, p.1, Order denying review, 10/14/2014; *FedEx Freight, Inc.*, Case 04-RC-136233, DD&E, 10/6/2014, p.1, Order denying review, 10/29/2014; *FedEx Freight, Inc.*, Case 22-RC-134873, DD&E, 10/7/2014, p.1, Order denying review, 10/29/2014; *FedEx Freight, Inc.*, Case 22-RC-135473, DD&E, 10/14/2014, p.1; *FedEx Freight, Inc.*, Case 22-RC-136143, DD&E, 10/22/2014, p.1; *FedEx Freight, Inc.*, Case 05-RC-136673, DD&E, 10/27/2014, p.1; *FedEx Freight, Inc.*, Case 10-RC-136673, DD&E, 10/27/2014, p.1; *FedEx Freight, Inc.*, Case 09-RC-136994, DD&E, 10/31/2014, p.1; *FedEx Freight, Inc.*, Case 10-RC-138126, DD&E, 11/6/2014, p.1;

Because record confirms that the City Drivers and Road Drivers at the Charlotte terminal constitute a readily identifiable group and share a community of interest, the petitioned-for unit is appropriate. *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011), quoting *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 11 (2011), and *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir 2008). Counsel for FedEx Freight realizes that a unit of city and road drivers working from an LTL freight terminal has

long been recognized by the Board as a bargaining unit appropriate in this industry. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662 (2000)(Board reversed a finding that a petitioned-for unit of dockworkers should include truck drivers); *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967)(unit of drivers is appropriate). The Employer has failed to meet its burden to show that City Drivers and the Road Drivers at the Charlotte terminal share an overwhelming community of interest with the Dockworkers, Supplemental Drivers and Driver Apprentices in such a manner as to make the petitioned unit inappropriate, or in any way require a different result than that determined by the Regional Director on the record in Case 04-RC-133959, or the other *FedEx Freight, Inc.* representation cases cited above.

Therefore, Petitioner IBT Local 71 submits that the Employer's request for review in this Case 10-RC-136185 presents no compelling reasons for the Board to grant review of the Regional Director's DD&E dated 10/21/2014. Petitioner IBT Local 71 adopts the arguments and analysis filed in the Opposition of the Petitioner IBT Local 107 to the Employer review request in *FedEx Freight, Inc.*, Case 04-RC-133959, review denied by Order dated 10/8/2014. Local 71's present opposition statement addresses the areas the Employer attempts to distinguish in the record at Charlotte and the Employer's meritless attempt to raise reviewable issues under Section 102.67(c) of the Board's Rules and Regulations.

Regional Director did not err in analysis of the record²

The Joint Stipulation of Facts at the Charlotte terminal shows no overwhelming community of interest between the drivers and dockworkers. The Regional Director correctly gleaned the following, undisputed, findings of fact from the record. There are approximately 115 City Drivers and 106 Road Drivers working at the Charlotte terminal. City Drivers drive

² Case 10-RC-136185 DD&E at pages 2, 4, 5, 6 and 7.

tractor-trailers and spend the bulk of their day away from the Employer's terminal. These duties accounted for approximately 86% of City Drivers' work. City Drivers also occasionally perform the work of Road Drivers. In total 57 of the 111 City Drivers accumulated road hours, but road work was not evenly distributed among City Drivers. Six City Drivers accounted for 48% of all the road hours accumulated by City Drivers as a group. Road work was the primary job duty for three of these employees. City Drivers as a group spent 9% of their time performing road work. Road Drivers transport freight between the Terminal and other FedEx facilities. These driving duties comprised approximately 98% of all the work performed by Road Drivers. City hours comprised 2% of all the work performed by Road Drivers.

Although the record shows that some of the City Drivers at Charlotte perform voluntary dock work over the relevant period, as at the terminal in Case 04-RC-133959, these “dock work” hours were worked sporadically by drivers at an average rate far lower than the “dock work” hours attributed to the “Supplemental Dockworkers” or the dock work hours attributed to the full time Dockworkers. Employer Exhibit 2. The record showed that 46% of the City Drivers performed at least some dock work. Like road driving, dock work is not evenly distributed among the City Drivers. Five City Drivers accounted for 44% of all the dock work performed by City Drivers. As a group, City Drivers spent 3% of their time performing dock work—just under two-and-a-half hours per 40-hour week. Only three Road Drivers' performed any dock work, and of these three, just one Road Driver accounted for 96% of the 103 total hours Road Drivers spent performing dock work. Thus, dock working duties comprise just 0.09% of the work performed by Road Drivers as a group.

Normally, Road Drivers and City Drivers only work the dock if they elect to, usually in order to supplement their hours if their driving hours are short in a given week. Though the

Employer can mandate dock work, it generally accommodates Road and City Drivers' preferences to work the dock or elect not to do so. What this record shows is that the dock hours attributed to drivers at the Charlotte terminal, as at the terminal in Case 04-RC-133959, is for the purpose of accommodating the drivers' work schedule, particularly the City Drivers, who, because of their commercial driver license and skills, will be available to the Employer for driving work that the Employer needs performed on certain days when driving work would not necessarily require a full driving shift by the driver.

Therefore, rather than a factor making a driver unit inappropriate, this record of voluntary dock hours by drivers at the Charlotte terminal shows that the irregular nature of those hours is a factor of the driving work of the City Drivers and the Road Drivers, not as a result of dock work being the primary task assigned.. The majority of the drivers at the Charlotte terminal have no dock work hours attributed to their work schedule³ during the relevant period in Employer Exhibit 2. Collective bargaining between the Employer and Local 71 regarding driver dock work hours is of an interest to the drivers, but has only an indirect effect on the working conditions of the employers exclusively assigned as Dock Workers or Supplemental Dock Workers.

Operational Supervisors directly supervise the City Drivers, Road Drivers, and Dockworkers. The Operational Supervisors are regularly assigned to supervise either the dock or dispatch; however, these assignments rotate frequently, even on a daily basis. A separation of supervisor duties exists for those employees in the Driver classifications. While assigned to supervise the City and Road Drivers or to work dispatch, Operational Supervisors work out of

³ About 23% of the City Drivers also were assigned to move trailers and other equipment in the yard, known as "hostling," during the six-month period. This work is heavily concentrated among a few of the City Drivers. Two City Drivers accounted for 69% of all hostling hours. Hostling work accounted for 2% of all the work performed by City Drivers as a group. Again, this work is performed by drivers to provide for their availability for driving assignments.

the dispatch office in the main building. Operational Supervisors supervising the dock generally roam the dock and work out of dock stands on the dock.

Overall, the small number of City and Road Drivers who accrued dock hours performed only 4% of all the dock work at the Charlotte terminal. There is no other significant evidence of contact between drivers and Dockworkers. As noted by the Regional Director in Case 04-RC-133959, the fact that a small percentage of the Charlotte terminal drivers had prior experience as dock workers does not make a unit of Road Drivers and City Drivers inappropriate. Moreover, there is no evidence that any Dockworkers have ever performed the duties of a driver. Evidence of one-way interchange involving only a limited portion of the drivers' working time is not persuasive evidence that the Dockworkers share a community of interest with the drivers. *DTG Operations, Inc.*, 357 No. 175, slip op. at 7 (2011) (limited, one-way interchange involving a minority of the unit does not require a classification to be added to a petitioned-for unit).

The Employer also argues that there is significant interchange based on the 18 permanent transfers into the driver classifications by former Dockworkers. However, "evidence of permanent interchange is a less significant indicator of whether a community of interest exists than is evidence of temporary interchange." *Bashas', Inc.*, 337 NLRB 710, 711 fn. 7 (2002). In addition, even the permanent interchange in this case is one-way, as there is no evidence that Road or City Drivers have transferred to the Dockworker classification. The hostler eligibility list, in Employer Exhibit 1, does not make the City Driver and Road Driver unit inappropriate. Six of the names at the end of that list include managers and supervisors at the Charlotte terminal. Employer gives no reasoned rational to explain how the hostler eligibility list makes a driver unit inappropriate at the Charlotte terminal.

One of the most significant differences between the employees in the petitioned-for unit and the Dockworkers is the disparity in hours, wages, and benefits. All of the Road and City Drivers are full-time employees earning between \$50,000 and \$70,000 per year. As full-time employees, they are also entitled to paid holidays and paid vacations. In contrast, 58% of the Dockworkers are part-time employees earning between \$25,000 and \$30,000 per year, who are ineligible for paid holidays or vacations. The remaining full-time Dockworkers have a slightly lower starting rate than City Drivers. During the six-month period, the average Dockworker accrued 39% fewer work hours than the average driver.

While there is much debate in the Employer's Request for Review regarding whether it has established separate "departments" among its classifications of employees at the Charlotte terminal, the Regional Director's analysis of the facts contained in the stipulated record in this case confirm that that the City Drivers and Road Drivers at the Charlotte terminal constitute a readily identifiable group and share a community of interest. *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013).

The Regional Director did not depart from Board precedent.

For its claims under Section 102.67(c) of this request, the Employer relies primarily on the decision in *Levitz Furniture Company of Santa Clara*, 192 NLRB 61 (1971), in support of its argument that the Dockworkers are required by Board precedent to be included in a unit with the drivers. The Regional Director, in response, correctly noted that the Board in *DTG Operations, Inc.*, supra, slip op. at 6, fn. 23, stated that the *Levitz* case does not consider "whether the disputed employees share an overwhelming community of interest with the unit employees."

However, even assuming that *Levitz* survives *Specialty Healthcare*, the Regional Director found that it is readily distinguishable here. Case 10-RC-136185 DD&E at page 10.

The Regional Director explained that the Board in *Levitz* relied heavily on its finding that the truck drivers in that case shared many community-of-interest factors and had "such regular and frequent interchange" with other employees in the facility that they did not constitute a "clearly identifiable group." *Id* at 63. At the Fed Ex Freight Charlotte terminal, the vast majority of the drivers in the petitioned-for unit have neither regular nor frequent interchange with the Dockworkers, and as the Regional Director found, they constitute a readily identifiable group, subject to distinct qualifications and licensure. *Home Depot USA*, supra at 1291 (driver only unit appropriate despite spending 30-40% of working time on non-driving tasks). Case 10-RC-136185 DD&E at page 10.

The Regional Director appropriately applied Board precedent with regard to the only other case cited by the Employer as requiring a unit to include Dockworkers. The Regional Director concluded that the Board has held "[D]rivers may constitute an appropriate unit apart from warehouse and production employees unless they are so integrated with a larger unit that they have lost their separate identity." *Triangle Building Products, Corp.*, 338 NLRB 257, 266 (2002) (citing, among others, *E. H Koester Bakery Co., Inc.*, 136 NLRB 1006, 1012 (1962)). Because Petitioner IBT Local 71 seeks to represent a unit of drivers only at the Charlotte terminal, an important consideration absent from other decisions cited by the Employer in support of its argument, such cases are readily distinguishable. "Also, the drivers here are not integrated into the larger unit of Dockworkers. On the contrary, drivers maintain their separate identity, in part, because they spent 98% of their time performing city and road work." Case 10-RC-136185 DD&E at page 11.

Conclusion

Petitioner Teamsters Local 71 submits that a unit of City Drivers and Road Drivers employed by the Employer at its Charlotte Terminal located in Charlotte, North Carolina is a unit appropriate for collective bargaining. Local 71 requests that the Board deny the Employer's Request for Review of the Regional Director's findings that a question concerning representation exists among the City Driver and Road Driver unit at the Charlotte terminal and directing an election for certification of Local 71 as representative. The Employer's review request in the present case raises no issues warranting review under the Board's Rules and Regulations.

Date: November 12, 2014

Respectfully submitted,

TEAMSTERS LOCAL UNION NO. 71
Petitioner, By Counsel:

s/ James F. Wallington

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Certificate of Service

I hereby certify that I have served a copy of the foregoing Petitioner Teamsters Local Union No. 71 Opposition to Employer Request for Review in *FedEx Freight, Inc.*, Case 10-RC-136185 on this 12th day of November, 2014 upon the Regional Director, by NLRB.gov E-File procedures, and by electronic mail upon the following representatives of the Employer:

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